

# The Federal State

## History

The birth of the federal state coincides with the foundation, in 1787, of the American Federation. The text of the Constitution of the United States of America, approved by the Philadelphia Convention, 17<sup>th</sup> September 1787, in fact represents the first historical example of a federal constitution. The Constitution of 1787 was actually a compromise between the positions of those who wanted to create a unitary state among the thirteen former British colonies, and those who wanted to maintain a confederation which would not call into question the states' sovereignty. Through this constitution was born a form of state that was able to reconcile the unity needed to prevent conflicts arising among the old British colonies and to guarantee their external security, with the autonomy necessary to safeguard their liberty. It was a form of state that, as Alexander Hamilton noted, "far from implying an abolition of the State governments, makes them constituent parts of the national sovereignty, by allowing them a direct representation in the Senate, and leaves in their possession certain exclusive and very important portions of sovereign power. This fully corresponds, in every rational import of the terms, with the idea of a federal government" (*The Federalist*, N. IX).

In the 20<sup>th</sup> century the federal model subsequently spread around the world (with the exception in Europe of Switzerland, which became a federation during the 19th century), especially to the countries of the Commonwealth (such as Australia, Canada and India). In Europe, apart from Switzerland, Germany also adopted a federal constitution after the Second World War; as did Brazil in Latin America and Nigeria in Africa.

## What Federal State Is

The principal characteristic of federal state is the fact that in it, in addition to the

functional division between legislative, executive and judicial powers, there exists a territorial division of powers between the various levels of government which are simultaneously independent and coordinated. In existing federal states, there are essentially two specified levels of govern-

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### WHAT FEDERAL GOVERNMENT IS

*What then is federalism? Its essence consists, I think, in this: that in a federal system, the functions of government are divided in such a way that the relationship between the legislature which has authority over the whole territory and those legislatures which have authority over parts of the territory is not the relationship of superior to subordinates... but a relationship of co-ordinate partners in the governmental process. In a federal government there is a division of governmental functions between one authority, usually called the federal government, which has power to regulate certain matters for the whole territory, and a collection of authorities, usually called state governments, which have power to regulate certain other matters for the component parts of the territory. This division, as has been said, is made in a particular way. First, the actual allocation of functions between federal and state governments cannot be altered either by the federal government acting alone or by the state governments acting alone and, secondly, the exercise by the federal government of its allotted functions cannot be controlled by the state governments or vice versa. Federal government means therefore a division of functions between co-ordinate authorities, authorities which are in no way subordinate one to another either in the extent or in the exercise of their allotted functions.*

WHAT FEDERAL GOVERNMENT IS, 1943

ment: the federal state and the member states. However over recent years there has developed a very strong demand, particularly in western Europe, to organise also the member states on the basis

of federal institutions, and hence to recognise all the local communities, from districts to towns, cities and regions, as autonomous levels of power. Unlike unitary states, the central government in federal states possesses only the minimum number of competencies and necessary powers to guarantee the political and economic unity of the federation, while the other levels possess full capacity for self-government in all other spheres. In its own sphere no government level must be subordinate to the level above.

This constitutional balance is also reflected in the composition of legislative power, which is characterised by a particular type of bicameralism. Taking the example of existing federal states, one branch of parliament represents the people of the federation in measure proportional to the number of electors, while the other is composed of representatives of the states. In order to be passed, laws must have both the support of a majority of the representatives of the people of the federation, and of a majority of the member states. Where multiple levels of government exist, this type of bicameralism needs to be reproduced at every level.

In order to guarantee the division of powers between central and local government, this must not only be sanctioned by a written constitution, but also protected by an autonomous power that is able to annul any legislative and administrative provisions which do not conform to the constitution, and that gives judgements in the final instance when conflicts over the division of powers arise. This power is the judiciary, which bases its own independence on the very existence of the various levels of government (each of which has an interest in protecting the independence of the judiciary with respect to the other levels) and which can therefore guarantee the primacy of the constitution by imposing respect for it on all organs of the federal state.

Finally, so that no government level is subordinate to the others in the sphere of its own competences, it is necessary that each level has sufficient resources available to carry out the functions assigned to it by the constitution. All government levels must therefore have the power to levy taxes in order to finance their own services and policies. Fiscal federalism examines the ways and means by which fiscal activity among the various levels of the federation's government can be coordinated.

### Federal State and Confederation

The feature which differentiates the federal state from the confederation is the existence of a true common power which, on the one hand is able to regulate relations between the states on a legal basis and to abolish the need to resort to force in conflicts or disputes and, on the other hand, has direct power over individual citizens, who join together to form it democratically. The confederation is not a state, but a collection of sovereign states that regulate their mutual relationships, which in the final instance are based on force, and that maintain an exclusive power over their citizens. In the confederation the confederal level is subordinate and dependent for its functioning on the states which make it up. The confederation is based on the principle of the representation of the states, not of the citizens, and in fact give the vote to the states alone, in this way excluding the people from decisions which concern inter-state relations. The right of veto, which is always provided for in confederations and which can paralyse all common actions, imposing the will of a single state on the majority, is the symbol of the absolute sovereignty that is maintained by states which establish a confederation.

### The Federal State as a New Form of International Organisation

Thanks to the mechanism of dividing democratic representation and hence thanks to the co-existence of the principle of the unity of the political community with that of the independence of its parts, the

federal state is able to reconcile the advantages of small size, which enables individuals to participate directly in the process of forming political decisions, with the advantages of large size, which is needed for security and economic development. Hamilton defined the essential characteristic of this institutional innovation as the enlargement of the orbit of democratic government from a single state to a union of states, that is, the possibility of unifying different national com-

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#### **PEACE AS A PRESUPPOSITION OF DEMOCRACY**

*The problem of establishing a perfect civil constitution is subordinate to the problem of a law-governed external relationship with other states, and cannot be solved without solving the latter.*

*IDEA FOR A UNIVERSAL HISTORY ON A COSMOPOLITAN PLAN, 1784.*

munities and of achieving political participation over an unlimited territorial area. This means that the federal state is not only a new form of government but also a new form of international organisation, the only one which is fully capable of realising peace, because it removes from the states the power to make war, by transforming international relations of force into relations based on law. By allowing citizens to participate democratically in forming the power which regulates relations between states, federal institutions realise international democracy.

The federal state can achieve its full realisation only through a world federation, whereas its historical manifestations have so far been imperfect and unstable. The need, in a situation of international anarchy, even for federal states to maximise the power of the state has in fact generated strong incentives for centralisation, as shown by the case of the United States following the First World War, when its substantial isolation came to an end. Only by achieving federal institutions at all levels, up to the world level, will international anarchy be brought to an end by transforming international rela-

tions into legal relations among equals; *raison d'Etat* will be abolished and politics will no longer be at the service of the power of the states, but at the service of the common good of the human race.

### The European Union

The world federation undoubtedly represents a long term objective; however it is the only perspective in which it is conceivable to provide a positive and democratic response to growing global interdependence, which has already transformed the world into a community of destiny, and to the crisis of the nation-states, which are by now clearly inadequate for tackling the great challenges the world faces (whether economic, political, ecological, or even social and cultural). This explains why in all areas of the world integration processes are under way (such as the European Union, NAFTA, Mercosur, the Andean Pact, ASEAN, the CIS, the African Regional Unions, etc.) which, if they are further developed, can only have a federal outcome.

Europe is the continent where this process is most advanced and where therefore there is the greatest awareness of the revolutionary significance of the transformation underway. The European federation will represent the first example in history of the overcoming of the national dimension of the state, and constitutes a unification model for all regions of the world. On the basis of great continental federal unions it will one day be possible radically to reform the UN, and to create a true democratic world government.